

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1532 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAM MAVJIBHAI PURANIYA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR LR PUJARI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/10/1999

ORAL JUDGEMENT

#. Heard the learned advocate Ms. Banna Datta for the petitioner and Mr. L.R. Pujari, learned AGP for respondent nos. 1, 2 and 3. The detention order dated 2.1.99 passed by respondent no.1 - Commissioner of Police, Ahmedabad city against the petitioner in exercise of power conferred under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition under

article 226 of the Constitution of India.

#. The grounds of detention served on the petitioner under section 9(1) of PASA, copy of which is produced at Annexure :C inter alia indicate that two prohibition cases are registered against the petitioner at Satelllite Police Station and foreign made liquor was seized from his possession. That one prohibition case was registered at Naroda Police Station and foreign made liquor was seized from his possession. Over and above that, a criminal case under section 307 read with section 114 of I.P.C. was registered at Satelllite Police Station vide CR No. 492/98 on 10.9.98. That the petitioner was released on bail in the above-stated two prohibition cases while he was in judicial custody in respect to the third case registered vide CR No. 492/98. Over and above that, two witnesses on assurance of anonymity have supplied information vide their statements dated 25.12.98 and 31.12.98 regarding anti-social activities of the petitioner. The statements relate to two incidents alleged to have occurred on 11.11.98 and 5.12.98 respectively.

#. On the basis of the aforesaid material, respondent no.1 as detaining authority has concluded that the petitioner is a "bootlegger" within the meaning of section 2 (b) of PASA and is also a "dangerous person" within the meaning of section 2 (c) of PASA. It is also stated in the grounds of detention that the petitioner is likely to get bail in a case registered vide CR No. 492/98 at the Satelllite Police Station and is likely to continue his anti-social activity which prejudicially affects the maintenance of public order. That resort to general provisions of law is not sufficient to prevent the petitioner and hence the impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. However, the first ground being sufficient to merit the acceptance, it is not necessary to consider other grounds. It has been submitted on behalf of the petitioner at the Bar that while passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy like cancellation of bail already granted to the petitioner. The said fact disclosed non application of mind which has vitiated the subjective satisfaction rendering the impugned detention order invalid.

#. Learned AGP Mr. L.R. Pujari relying on the affidavit of respondent no.1 dated 12th August, 1999 has attempted to salvage the issue by contending that the

procedure for cancellation of bail is also a time consuming procedure while in the instant case, the petitioner-detenu was required to be detained forthwith so as to prevent him from continuing his anti-social activity.

#. In the proceedings of L.P.A. No. 1056 of 1999 decided on 15.9.99, this Court has expressed a view that non consideration of less drastic remedy like cancellation of bail as available under section 437(5) of Cr.P.C. vitiates the subjective satisfaction of the detaining authority rendering the detention order invalid. That in the instant case also, the grounds of detention disclosed the fact that respondent no.1 as detaining authority failed to consider the aspect of less drastic remedy regarding cancellation of bail in order to prevent the petitioner from continuing his alleged criminal anti-social activity. The grounds of detention also suggest that the detaining authority has passed the impugned order on apprehension that the petitioner who was in judicial custody is likely to be released on bail and thereafter is likely to continue his anti-social activity which disclosed total non application of mind. In view of the same, I am constrained to hold that the said non application of mind has vitiated the subjective satisfaction rendering the impugned detention order invalid.

#. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 2nd January, 1999 passed by respondent no.1 - Commissioner of Police, Ahmedabad city is hereby quashed and set aside. The petitioner-detenu-Ghanshyam Mavjibhai Puraniya is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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